

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
ABKCO MUSIC & RECORDS, INC.,
ABKCO MUSIC, INC., UMG RECORDINGS,
INC., UNIVERSAL - SONGS OF POLYGRAM
INTERNATIONAL INC., POLYGRAM
PUBLISHING, INC., SONGS OF UNIVERSAL, INC.,
UNIVERSAL MUSIC CORP., and
CAPITOL RECORDS, LLC,

Case No.: 19-cv-11892

Plaintiffs,

**DECLARATION OF
ALASDAIR McMULLAN IN
SUPPORT OF
PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT**

v.

CODA PUBLISHING, LTD., ROBERT KIRK
CARRUTHERS, CLARE ANNE GAMBOLD,
GWILYM MICHAEL DAVIES, and VISION
FILMS, INC.,

Defendants.

-----x

I, ALASDAIR McMULLAN, hereby declare pursuant to 28 U.S.C. § 1746, as follows:

1. I am Executive Vice President of Business & Legal Affairs at UMG Recordings, Inc., which is the United States-based legal entity for recorded music operations, and part of the group of companies colloquially known as “Universal Music Group” (“UMG”). UMG is a vertically integrated, global group of affiliated record labels and other corporate entities. UMG’s foreign affiliated record labels operate on every continent. In my capacity as in-house counsel for UMG, I manage and supervise litigation for UMG among whose recording entities are Plaintiffs, UMG Recordings, Inc and Capitol Records, LLC (formerly Capitol Records, Inc.), collectively referred to herein as “UMG Plaintiffs”.

2. I submit this declaration on behalf of the UMG Plaintiffs in support of Plaintiffs’ motion for summary judgment against the Defendants on the issues of liability and Defendants’

willful infringement.

3. I am familiar with the business records of the UMG Plaintiffs, including documents such as copyright certificates, recording agreements, and other agreements with third parties (including those referenced in this Declaration) pursuant to which the UMG Plaintiffs acquire ownership of, and control of exclusive rights to, the sound recordings at issue in this litigation. I have personal knowledge of the information contained in this Declaration through my employment with UMG Recordings, Inc., and my understanding of the processes through which it acquires copyrighted works, including through past acquisitions of other corporate entities and copyright catalogs, as well as my understanding of the company's business and contractual relationships. Also, I am generally familiar with the UMG Plaintiffs' asset purchase agreements, recording agreements, exclusive license agreements, and the company's copyright registration process in the United States. If called upon as a witness, I could and would testify competently to the information contained herein.

4. UMG Recordings, Inc. is a Delaware corporation with its primary business office located in Santa Monica, California.

5. Capitol Records, LLC is a limited liability company formed under the laws of the State of Delaware with its primary business office located in Santa Monica, California.

6. The UMG Plaintiffs' sound recordings (the "UMG Infringed Works") that have been infringed by Defendants are included with the infringed sound recordings, film clip and musical compositions of Plaintiffs, Universal-Songs of PolyGram International Inc., PolyGram Publishing, Inc., Songs of Universal, Inc., and Universal Music Corp. (the "UMPG Plaintiffs"), ABKCO Music & Records, Inc. ("AMR") and ABKCO Music, Inc., ("AMI") respectively, in

Exhibit "A" (the "Infringed Works") to the First Amended Complaint. (ECF #73).¹ The Infringed Works consist of five (5) sound recordings owned or controlled by the UMG Plaintiffs; sixty (60) musical compositions owned or controlled by the UMPG Plaintiffs, eighteen (18) musical compositions owned or controlled by AMI, one (1) sound recording owned by AMR and one (1) film clip owned by AMR.

7. The UMG Plaintiffs are leading record companies engaged in the business of acquiring, owning, recording, distributing, marketing, licensing, and otherwise exploiting sound recordings, including, those performed by numerous iconic artists of the Rock n' Roll era. The UMG Plaintiffs have invested and continue to invest substantial money, time, effort, and talent to acquire, record, advertise, market, administer, distribute, license, and otherwise exploit such sound recordings, on their own behalf and on behalf of artist and other production companies who have assigned exclusive copyright interests and/or exclusive rights of exploitation to the UMG Plaintiffs.

8. The UMG Plaintiffs' exclusive copyright interests in their sound recording catalogs are their principal corporate assets and are central to their businesses. Accordingly, as a matter of corporate practice and policy, the UMG Plaintiffs take steps to protect their copyrights, including through registration with the U.S. Copyright Office and by entering into signed agreements under which the UMG Plaintiffs own or control the exclusive rights under copyright or agreement to the sound recordings they exploit. The UMG Plaintiffs have complied with this corporate practice and policy for all of their Infringed Works at issue in this case.

9. The UMG Plaintiffs seek to recover damages from Defendants for copyright

¹ Each of the UMG Infringed Works is identified in Exhibit A to Plaintiffs' First Amended Complaint.

infringement of the UMG Infringed Works in this litigation. The UMG Plaintiffs have obtained Certificates of Copyright Registration ("Registration Certificates") for each of the copyrighted sound recordings which are annexed and list the Bates numbers for the corresponding copyright registration certificate (or public catalog information) produced by the Plaintiffs in discovery. True and correct copies of the Registration Certificates and/or copyright registration information obtained from the U.S. Copyright Office's public catalog are attached to this declaration. In addition, true and correct copies of the agreements and other chain of title documents referenced below are attached to this declaration.

10. The UMG Plaintiffs' ownership or control of the UMG Infringed Works can also be confirmed via publicly available sources, such as through the U.S. Copyright Office website.

11. As explained in detail below, the UMG Plaintiffs own the entirety of, or exclusively license in the United States, one or more of the rights provided in 17 U.S.C. § 106 for each of its respective UMG Infringed Works. The UMG Plaintiffs possess and exploit in the United States their exclusive rights to, among other things, reproduce the Infringed Works in copies or phonorecords, to distribute copies or phonorecords of the Infringed Works to the public, to publicly perform the Infringed Works by means of a digital audio transmission, and to license these exclusive rights, including the exercise of these rights over the internet and in physical forms such as DVD's.

12. The UMG Plaintiffs' ownership interests in the UMG Infringed Works can be divided into two general categories: 1) one of the UMG Plaintiffs is a named claimant and/or author on the copyright registration; or 2) one of the UMG Plaintiffs acquired ownership or an exclusive license through its acquisition of, or merger with, another entity, *i.e.*, as a successor-in-

interest to the original named copyright claimant.

13. Each of the documents referenced below and attached hereto was made at or near the time of the registration or transaction referenced therein as part of the UMG Plaintiffs' or its predecessor's regularly conducted activities as a record label and have been and continue to be kept in the ordinary course of business. Those documents that were created by a predecessor of the UMG Plaintiffs have been fully integrated into the UMG Plaintiffs' records, are relied upon in their daily operations, and the UMG Plaintiffs consider and treat such business records as their own.

**INFRINGING FILMS: “RED HOT CHILI PEPPERS – BEHIND THE MUSIC” and
RED HOT CHILI PEPPERS - PHENOMENON**

PERFORMER: RED HOT CHILI PEPPERS

INFRINGED WORKS:

“Fight Like A Brave”
“Jungle Man”
“Knock Me Down”
“Higher Ground”

14. **Plaintiff Capitol Records, LLC** or “Capitol Records, Inc.” is a named claimant on the copyright registrations for the four (4) Infringed Works performed by the Red Hot Chili Peppers, as follows below.

15. The copyright registration for the sound recording “Fight Like A Brave” was the subject of a Certificate of Registration on June 5, 1988 in the name of Capitol Records, Inc., as part of the album entitled Uplift Mofo Party Plan and received Registration No. SR 93015, attached hereto as Exhibit 1 (PLAINTIFFS0000487-488).

16. The copyright registration for the sound recording “Jungle Man” was the subject of a Certificate of Registration dated June 13, 2002 in the name of Capitol Records, Inc. c/o EMI

Recorded Music North America, as part of the album entitled Freaky Styley and received Registration No. SR 342227, attached hereto as Exhibit 2 (PLAINTIFFS0000483-484).

17. The copyright registration for the sound recordings “Knock Me Down” and “Higher Ground” was the subject of a Certificate of Registration dated September 22, 1989 in the name of Capitol Records, Inc., as part of the album entitled Mother’s Milk and received Registration No. SR 107737, attached hereto as Exhibit 3 (PLAINTIFFS0000485-486).

18. On April 1, 2008, Capitol Records, Inc. changed its name to Capitol Records, LLC. A Certificate of Conversion was filed on March 31, 2008 with the Secretary of State of the State of Delaware for a conversion of a Delaware Corporation to a Delaware LLC and changing the name from Capitol Records, Inc. to Capitol Records, LLC, Authentication No.: 6487696, attached hereto as Exhibit 4 (PLAINTIFFS0000598-600).

19. A Certificate of Formation was filed on March 28, 2008, for the formation of Capitol Records, LLC in the State of Delaware, attached hereto as Exhibit 5 (PLAINTIFFS0000631).

INFRINGEMENT FILM: NIRVANA – THE ULTIMATE REVIEW

PERFORMER: NIRVANA

INFRINGED WORKS:

“Smells Like Teen Spirit”

20. “The David Geffen Company” is a named claimant on the copyright registration for the one (1) Infringed Work performed by Nirvana, as follows below.

21. The copyright registration for the sound recording “Smells Like Teen Spirit” was registered on October 31, 1991 in the U.S. Copyright Office as Registration No. SR 135355 in the name of The David Geffen Company as part of the album entitled Nevermind, attached hereto as

Exhibit 6 (PLAINTIFFS0000481-482).

22. Plaintiff UMG Recordings, Inc. owns or controls exclusive rights to this Infringed Work through a series of corporate transactions. On October 28, 1992, The David Geffen Company changed its name to Geffen Records, Inc. *See Exhibit 7 hereto* (PLAINTIFFS0000620-621 (Certificate of Amendment of Articles of Incorporation)). Pursuant to an Agreement of Merger dated November 30, 1999 between Geffen Records, Inc. and UMG Recordings, Inc., Geffen Records, Inc. merged with and into UMG Recordings, Inc., which provided that UMG Recordings, Inc. shall continue as the surviving corporation. *See Exhibit 8 hereto* (PLAINTIFFS0000641-646).

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.



ALASDAIR McMULLAN

Executed this 28 day of September 2021 in Santa Monica, California